

CRM-M-59184-2023

2024:PHHC:110569



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-59184-2023 (O & M)
Reserved on 21.08.2024
Date of Pronouncement:28.08.2024

Mangal Sain Sharma Petitioner
V/s
State of Punjab and anr. ...Respondents

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Narinder S. Lucky, Advocate,
for the petitioner(s).

Ms. Ramta K Chaudhary, DAG, Punjab,
for respondent No.1.

Mr. Rahi Mehra, Advocate,
for respondent No.2.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of the order dated 03.10.2017 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Tarn Taran, summoning the petitioner, namely, Mangal Sain Sharma as accused in case titled as ‘Jeewan Kumar v. Mangal Sen and others bearing No.COMI-63-2016 filed on 11.05.2016 under Sections 323, 324, 326, 452, 148 and 149 IPC.

CRM-M-59184-2023

2024:PHHC:110569



::2::

2. The brief facts of the case are that the complainant-respondent filed a complaint with the allegations that he had a property dispute pending in Uttar Pradesh with the accused. The accused had come to the house of his uncle at Amritsar and had also come to his house with a view to putting pressure to compromise the matter. As he (complainant) had refused to compromise the matter and withdraw the case, the accused persons had given injuries to him on 21.02.2026. A copy of the complaint dated 11.05.2016 is attached as Annexure P-1 to the petition.

3. Based on the preliminary evidence led, the accused persons including the petitioner came to be summoned to face Trial under Sections 326, 323, 324, 452, 148 and 149 IPC vide order dated 03.10.2027. A copy of the summoning order dated 03.10.2017 is attached to the petition as Annexure P-2.

4. The aforementioned summoning order dated 03.10.2017 (Annexure P-2) is under challenge in the present petition.

5. The learned counsel for the petitioner contends that the complaint (Annexure P-1) had been filed at Tarn Taran. As the accused No.1 to 5, namely, Mangal Sen (petitioner), Suraj @ Titu, Ajay, Sonu and Vimal were residents of District Rampur (U.P.), the Court ought to have conducted an enquiry under Section 202 Cr.P.C. prior to the passing of the summoning order (Annexure P-2). Therefore, as the said compliance had not been made, the summoning order (Annexure P-2) was liable to be set aside. Reliance is

placed upon the judgments in '*National Bank of Oman versus Barakara*

CRM-M-59184-2023

2024:PHHC:110569



::3::

Abdul Aziz and Anr. (in Special Leave Petition (Crl) No.9098 of 2012 decided on 03.12.2012), Udai Shankar Awasthi versus State of U.P. and another (Criminal Appeal No.61 and 62 of 2013 decided on 09.01.2013), Abhijit Pawar versus Hemant Madhukar Nimbalkar & anr., 2017(1) RCR (Criminal) 405, Deepak Gaba and others versus State of Uttar Pradesh and another 2023(1) RCR (Criminal) 659, Odi Jerang versus Nabajyoti Baruah and ors. 2023(3) Apex Court Judgments (SC) 64 and Shiv Jatia versus Gian Chand Malick & Ors. 2024(2) RCR (Criminal) 76’.

6. The learned counsel for respondent No.1-State contends that it is a complaint case, therefore, the reply on merits is not required to be filed on behalf of the State.

7. The learned counsel for respondent No.2-complainant, on the other hand, contends that a perusal of the summoning order (Annexure P-2) would reveal that not only was the statement of the complainant recorded but the statements of various other witnesses were recorded and many documents had been exhibited. As the statements of multiple witnesses were recorded and various documents had been exhibited it amounted to substantial compliance of the provisions of Section 202 Cr.P.C. and therefore, no fault could be found with the impugned order and the present petition was liable to be dismissed. Reliance is placed upon the judgment in *‘Vijay Dhanuka Etc. versus Najima Mamtaj Etc.2014(14) SCC 638’.*

8. I have heard the learned counsel for the parties.



9. Before proceeding further, it would be relevant to examine the provisions of Sections 200, 202, 203 and 204 Cr.P.C. and the same are reproduced hereinbelow:-

200. Examination of complainant.-

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192 :

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

“202. Postponement of issue of process:- *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding;*



Provided that no such direction for investigation shall be made

—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under Sub-Section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath;

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under Sub-Section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant”.

203- Dismial of complaint:-

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing”.

204 Issue of process:-

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at

CRM-M-59184-2023

2024:PHHC:110569



::6::

a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

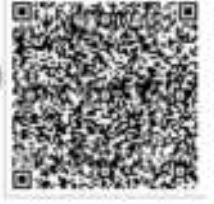
(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87. ”

10. The various judgments relied upon by the parties are as under:-

The Hon'ble Supreme Court in '***National Bank of Oman versus Barakara Abdul Aziz and Anr. (in Special Leave Petition (Crl) No.9098 of 2012 decided on 03.12.2012)***' has held as under:-

4. The Respondent challenged that order by filing Criminal Application No. 3146/2012 before the High Court of Judicature, Bombay Bench at Aurangabad. It was contended that the allegations in the complaint do not prima facie constitute any offence or make out a case for issuance of process under Sections 418 and 420 of the Indian Penal Code. Further, it was stated that the Respondent-accused was a resident of Dakshin Kannada in the State of Karnataka and the C.J.M. Ahmednagar issued the process without complying with the mandatory requirement of making an enquiry or directing an investigation for the purpose of deciding whether or not there was sufficient ground for initiating proceedings against the accused as contemplated under Section 202 of the Code of Criminal



Procedure. The High Court took the view that prima facie the bare allegation of cheating did not make out a case against the accused for issuance or process under Section 418 of 420 of the Indian Penal Code. Further, it was held that the C.J.M. did not follow the procedure laid down under Section 202 of the Code of Criminal Procedure. The High Court held that the Magistrate was obliged to postpone the process against the accused and either enquire the case himself or direct an investigation to be made by a police officer or by such other officer as he thinks fit for the purpose of deciding whether or not there is sufficient grounds for proceeding in a case where the accused is residing beyond the area in which the Magistrate exercises his jurisdiction. The High Court noticed that the accused is a resident of District Dakshin Kannada, Karnataka and hence, the CJM should have followed the procedure laid down in section 202 Code of Criminal Procedure. The High Court, therefore, set aside the order dated 25.2.2011 issuing the process under Sections 418 and 420 of the Indian Penal Code by the C.J.M. Ahmednagar. Aggrieved by the said order the Bank has come up with this special leave petition.

5. We find no error in the view taken by the High Court that the C.J.M. Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 of the Code of Criminal Procedure before issuing the process, considering the fact that the Respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the C.J.M. Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 of the Code of Criminal Procedure before issuing the process.



6. *The duty of a Magistrate receiving a complaint is set out in Section 202 of the Code of Criminal Procedure and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Code of Criminal Procedure is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under Section 202 of the Code of Criminal Procedure is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advertent to any defence that the accused may have.*

7. *Section 202 of the Code of Criminal Procedure was amended by the Code of Criminal Procedure (Amendment Act 2005) and the following words were inserted:*

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises jurisdiction."

8. *The notes on clauses for the above-mentioned amendment read as follow:*

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that



the innocent persons are not harassed by unscrupulous persons, this clause seeks to amend Sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused. "

9. *The amendment has come into force w.e.f. 23.6.2006 vide notification No. S.O. 923(E) dated 21.6.2006.*

10. *We are of the view that the High Court has correctly held that the above-mentioned amendment was not noticed by the C.J.M. Ahmednagar. The C.J.M. had failed to carry out any enquiry or ordered investigation as contemplated under the amended Section 202 of the Code of Criminal Procedure. Since it is an admitted fact that the accused is residing outside the jurisdiction of the C.J.M. Ahmednagar, we find no error in the view taken by the High Court. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 of the Code of Criminal Procedure. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 of the Indian Penal Code. The C.J.M. will pass fresh orders after complying with the procedure laid down in section 202 Code of Criminal Procedure, within two months from the date of receipt of this order.*

CRM-M-59184-2023

2024:PHHC:110569



::10::

The Hon'ble Supreme Court in '**Udai Shankar Awasthi versus State of U.P. and another (Criminal Appeal No.61 and 62 of 2013 decided on 09.01.2013)**', has held as under:-

26. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Criminal Procedure Code, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Criminal Procedure Code were amended vide Amendment Act 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.. (See also: Shivjee Singh v. Nagendra Tiwary & Ors., 2010(3) RCR (Criminal) 466 ; and National Bank of Oman v. Barakara Abdul Aziz & Anr., JT 2012 (12) SC 432).

The Hon'ble Supreme Court in '**Vijay Dhanuka Etc. versus Najima Mamtaj Etc.2014(14) SCC 638**', has held as under:

10. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a



police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" was inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23rd of June, 2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows :

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

11. The use of the expression 'shall' prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the



amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate. In view of the decision of this Court in the case of Udai Shankar Awasthi v. State of Uttar Pradesh, (2013) 2 SCC 435, this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment :

"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Cr.P.C., though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Cr.P.C. were amended vide the Amendment Act, 2005, making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases."

(underlining ours)

12. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows :

"2. xxx xxx xxx"

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

xxx xxx xxx"

13. It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an

CRM-M-59184-2023

2024:PHHC:110569



::13::

inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.

14. In view of what we have observed above, we do not find any error in the order impugned.

In the result, we do not find any merit in the appeals and the same are dismissed accordingly.

the Hon'ble Supreme Court in '***Abhijit Pawar versus Hemant Madhukar Nimbalkar & anr., 2017(1) RCR (Criminal) 405***', has held as under:-

22. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his



jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in Vijay Dhanuka v. Najima Mamtaj, 2014(3) RCR (Criminal) 793 : 2014(4) Recent Apex Judgments (R.A.J.) 459 : (2014) 14 SCC 638 in the following words:

"11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that



innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

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24. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been explained in Vijay Dhanuka 8 case, which is reproduced hereunder:

"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:



"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court,"

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

25. When we peruse the summoning order, we find that it does not reflected any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of complainant and after perusing the copies of documents filed on record, i.e., FIR translation of complaint, affidavit of advocate who had translated the FIR into English etc. the operative portion reads as under:

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 50 read with 34 of the Indian Penal Code. Hence issue process against the accused for the above offences returnable on 23.12.2009. case be registered as Summary Case."

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28. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High



Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, 2011(2) RCR (Rent) 293 : (2011) 12 SCC 695.

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the National Bank of Oman.

The Hon'ble Supreme Court in '**Deepak Gaba and others versus State of Uttar Pradesh and another 2023(1) RCR (Criminal) 659**', has held as under:-

22. While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act No. 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused.^[18] In the present case, the said exercise has not been undertaken.*

CRM-M-59184-2023

2024:PHHC:110569



::18::

[18 Vijay Dhanuka v. Najima Mamta, (2014) 14 SCC 638; Abhijit Pawar v. Hemant Madhukar Nimalkar, (2017) 3 SCC 528; and Birla Corporation Limited (Supra).]*

The Hon'ble Supreme Court in '***Odi Jerang versus Nabajyoti Baruah and ors. 2023(3) Apex Court Judgments (SC) 64***', has held as under:-

4. *There cannot be any doubt that in view of the use of word "shall" in sub-section 1 of Section 202 of the CRPC and the object of amendment made by the Act No. 25 of 2005, the provision will have to be held as mandatory in a case where the accused is residing at a place outside the jurisdiction of the learned Magistrate. In fact, in paragraph No.12 of the aforesaid decision relied upon by the learned counsel appearing for the petitioner, this Court held that in a case where one of the accused is a resident of a place outside the jurisdiction of the learned Magistrate, following the procedure under subsection 1 of Section 202 of the CRPC is mandatory. In the case of Vijay Dhanuka (2014) 14 SCC 638, this Court found that before issuing summons, the learned Magistrate had examined the complainant and two other witnesses on oath and therefore, on facts, this Court found that a substantial compliance with sub-section 1 of Section 202 of the CRPC was made.*

5. *In this case, even substantial compliance has not been made by the learned Magistrate. It is true that evidence was recorded before charge and at that stage, an objection was raised by the respondents. Considering the mandatory nature of sub-section 1 of Section 202 of the CRPC, in the facts of this case, non-*



compliance thereof will result into failure of justice. Hence, we find no error in the impugned order of remand passed by the High Court. Accordingly, the Special Leave Petition is dismissed.

The Hon'ble Supreme Court in ***Shiv Jatia versus Gian Chand Malick & Ors. 2024(2) RCR (Criminal) 76'***, has held as under:-

8. In this case, there is no dispute that some of the accused, including three of the appellants, were residing outside the territorial jurisdiction of the Court of the learned Magistrate before whom the complaint was filed by the 1st respondent-complainant. Sub-section (1) of Section 202 of the Cr.PC was amended with effect from 23rd June 2006 by the Act No.25 of 2005. Sub-section (1) of Section 202 of the Cr.PC, as amended, reads thus:

"202. Postponement of issue of process.-

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or



(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200."

(emphasis added)

The portion starting from "and" and ending with "his jurisdiction" was added with effect from 23rd June 2006. The requirement of postponing the issue of the process was introduced on 23rd June 2006 which is applicable only when one of the accused stays outside the jurisdiction of the court. The said requirement is held to be mandatory. The mandatory requirement of postponing the issue of the process because the accused was residing at a place beyond the area where the learned Magistrate exercises his jurisdiction was not applicable when the complaint was filed in 2004. The mandate introduced with effect from 23rd June 2006 was not applicable on the date of filing of the complaint. We are not examining whether the amended provision will apply to a complaint filed before 23rd June 2006 in which the order of issue of process has been passed after 23rd June 2006.

9. We may note here that when the order dated 15th December 2011, calling for the report from the concerned Police Station under Section 202 of the Cr.PC was passed, the learned Magistrate had already recorded the evidence of the 1st respondent-complainant and two witnesses - S.C.Mahto (CW-1) and Rajiv Kumar (CW-3). Therefore, after recording the evidence of the three witnesses, the learned Magistrate was not satisfied that the material on the record of the complaint, including the testimony of the three witnesses, was sufficient to pass the summoning order. That is why the learned Magistrate had called for the report under Section 202 of the Cr.PC.



10. Initially, some controversy was raised as the order dated 17th December 2012, passed by the learned Magistrate, records that a report was received. Therefore, we called for a soft copy of the record of the complaint. The record reveals that the report referred to in the order dated 17th December 2012 was submitted by the Police, seeking two more months to file the report. It is an admitted position that on record of the complaint, the report made by the Police under Section 202 of the Cr.PC was not received. In any case, Shri Kanwardeep Kaur, IPS, Senior Superintendent of Police, Union Territory of Chandigarh, in the affidavit filed on 24th October 2023, categorically stated that the Police did not file the report under Section 202 of the Cr.PC till 16th July 2013, when the summoning order was issued by the learned Magistrate.

11. After recording the evidence of the three witnesses and perusing the documents on record, the learned Magistrate passed the order calling for the report under Section 202 of the Cr.PC. He postponed the issue of the process. The learned Magistrate ought to have waited until the report was received. He had an option of conducting an inquiry contemplated by sub-section (1) of Section 202 of the Cr.PC himself due to the delay on the part of the Police in submitting the report. But, he did not exercise the said option. For issuing the order of summoning, the learned Magistrate could not have relied upon the same material which was before him on 15th December 2011 when he passed the order calling for the report under Section 202 of the Cr.PC. The reason is that, obviously, he was not satisfied that the material was sufficient to pass the summoning order. It is not the case of the 1st respondent-complainant that when the learned Magistrate passed the order

CRM-M-59184-2023

2024:PHHC:110569



::22::

dated 16th July 2013, there was some additional material on record. At least, the order of the learned Magistrate does not say so. The order does not even consider the earlier order dated 15th December 2011 calling for the report under sub-section (1) of Section 202 of the Cr.PC. The order issuing process has drastic consequences. Such orders require the application of mind. Such orders cannot be passed casually. Therefore, in our view, the learned Magistrate was not justified in passing the order to issue a summons.

11. A perusal of the provisions of Sections 200, 202, 203 and 204 Cr.P.C. would show that after the examination of the complainant and his witnesses which is to take place under Section 200 Cr.P.C., if the Magistrate thinks it fit and shall in cases where the accused is residing beyond the area in which he exercises his jurisdiction post-pone the issue of process and hold an enquiry or direct one to be made by the police officer before he chooses to summon the accused. When he hold an enquiry, he can examine witnesses on Oath as well. These could be the witnesses other than who stand examined under Section 200 Cr.P.C. If he find that no case is made out, he can dismiss the complaint under Section 203 Cr.P.C. and in case he finds that an offence is *prima facie* made out, he can summon the accused.

12. Apparently, where an accused is residing beyond the territorial jurisdiction of the Court before which a complaint had been filed, it is mandatory for the Court concerned to hold an enquiry prior to the issuance

CRM-M-59184-2023

2024:PHHC:110569



::23::

of process against the accused. However, how and in what manner the Court is to conduct an enquiry has not been specified.

13. The various judgments of the Hon'ble Supreme Court as mentioned above have held that a prior enquiry must be conducted either by the concerned Court or by a police officer in a case where the accused is residing beyond the jurisdiction of the Court concerned prior to the issue of process. Though, in the case of *Vijay Dhanuka Etc. (supra)*, the Hon'ble Supreme Court has held that recording of statements of witnesses would amount to substantial compliance under Section 202 Cr.P.C., the various other authorities in *National Bank of Oman versus Barakara Abdul Aziz and Anr., Udai Shankar Awasthi versus State of U.P. and another, Abhijit Pawar versus Hemant Madhukar Nimbalkar & anr., Deepak Gaba and others versus State of Uttar Pradesh and another, Odi Jerang versus Nabajyoti Baruah and ors. and Shiv Jatia versus Gian Chand Malick & Ors. (supra)*, have not made any such observation.

14. Apparently, the examination of the complainant and other witnesses takes place under Section 200 Cr.P.C. and therefore, any enquiry/investigation under Section 202 Cr.P.C. must be something more than just the recording of the statements of complainant and the witnesses under Section 200 Cr.P.C. or the exhibiting of documents by those witnesses. If the recording of statements of the complainant and witnesses and the exhibiting of documents by those witnesses amounted to the holding of an enquiry, then, there was no need for the Legislature to have incorporated

CRM-M-59184-2023

2024:PHHC:110569



::24::

under Section 202 Cr.P.C. which is a stage beyond the examination of the complainant and his witnesses. In fact, Section 202 Cr.P.C. would be rendered nugatory.

15. Coming back to the facts of the instant case, while it is true that a number of witnesses had been examined and various documents exhibited, as the accused were residing in the State of U.P. i.e. beyond the territorial jurisdiction of the Court at Amritsar, it was mandatory upon the Court to have held an enquiry in the manner that it thought fit. In the instant case, no such enquiry was held thereby violating Section 202 Cr.P.C.

16. In view of the above, I find substantial merit in the present petition and therefore, the summoning order dated 03.10.2017 (Annexure P-2) stands quashed. The matter is remanded back to the jurisdictional Magistrate to proceed further after complying with the requirements of Section 202 Cr.P.C.

17. Needless to say, this Court has expressed no opinion on the merits of the case and the Magistrate concerned is free to proceed further in accordance with law.

18. The present petition is disposed of in the above terms.

August 28, 2024
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No